

S P E E C H

OF

MR. JENKINS, OF NEW YORK,
ON
THE MEXICAN TREATY.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 17, 1849.

The House being in Committee of the Whole on the state of the Union, (Mr. CABELL, of Florida, in the chair,) on the bill to carry into effect the Treaty of Peace with Mexico, Mr. JENKINS said:

Mr. CHAIRMAN: I have listened with interest to the speech just made by the gentleman from Kentucky, (Mr. THOMPSON.) The arguments which he has put forth, showing the constitutional right in Congress to abolish the slave trade, as well as slavery itself, in the District of Columbia, and to exclude slavery from the new territories, were no less instructive than patriotic in their character. Without compromitting the interests of the Southern States, he has assured us that the discussion of this subject, and the exclusion of slavery from the new territories by Congress, so far from being a cause for dissolving the Union, or even for any material excitement, will quietly be acquiesced in, as other acts of our National Legislature are, and open to the future, prospects realized nowhere but in the past history of this country. Sir, I agree with these sentiments. They are the more a treasure because they come from a Kentuckian.

I cannot agree with the gentleman from Georgia, (Mr. STEPHENS,) who addressed the committee this morning. If there be any difference between the protocol, signed by our Ministers to Mexico, and the treaty of Guadalupe Hidalgo, this affords no good cause for abandoning and giving up the acquired territory. Further negotiation is the appropriate means of arranging such difference, if any such exist. No, sir, I am in favor of paying Mexico according to the terms of the treaty, and of providing a government for these territories without delay. The difficulties which the slave question presents, have induced some to desire a postponement of this subject for adjustment by another administration. I am opposed to this policy. Neither a belief in any superior abilities of the incoming administration on the one hand, or a desire to embarrass its operations on the other, can be a sufficient reason for delay upon this subject. At this time there is no civil government over this wide domain, except what arises from the laws of necessity. None can rightfully be instituted without the authority of Congress. The vast tide of emigration there, composed of the adventurous—those, mainly, who have had but little experience in the administration of the laws—must of necessity lead to conflicts injurious to the present peace of the people, and detrimental to the permanent prosperity of the country. If there be difficulties in the way of forming Governments for these territories, let us make an effort to surmount them. If there be dangers, let us meet them, and not rest supinely until we are overwhelmed.

Towers, printer, corner of Louisiana avenue and 6th street.

We have heard it said, that if the "Wilmot proviso" should be embodied in a territorial bill, the bill thus framed would never pass the Senate; or if it should struggle through that body, it would be met by the Executive veto. If these forebodings were well founded, should we therefore neglect *our* duty? Has it come to this, that an opinion shadowed forth from this quarter or that, high or low, should be construed into a *mandate*; and that this House must hence take heed and frame its enactments according to the prescribed rule? Such a practice may be well suited to purposes of arbitrary power, but can have no lodgement in a Government like ours. I complain not that the President, when he signed the Oregon bill, gave out that he would not have signed it, containing as it did the "Wilmot proviso," if the country had been located south of north latitude thirty-six degrees and thirty minutes. He had a right to speak for himself. We have the same right, and in case of disagreement the country must decide. No, sir; if such were the opinions of the President, I complain not that he has given utterance to them *in advance*. He has thereby afforded us a fair opportunity to examine the soundness of his positions, and we have some right to expect that closer scrutiny and more ample reflection, on his part, will yet place his opinions upon this subject in the line of coincidence with his vast constituency—a constituency whose interests he is supposed to represent, and whose will he must obey. In approving the act organizing the Territorial Government of Oregon, the President gave the sanction of his name and place to the constitutional right of Congress to exclude slavery from the Territories. All that remains in his mind, therefore, dwindles into a mere question of expediency—a question which time and reason will take care of. But I put this question upon higher ground than the opinions of any President. Notwithstanding the force of great names, the force of principle is greater. The confidence which the opinions of men inspire, is feeble indeed when compared to clear conviction, founded upon adequate examination. A strong sense of justice pervading the public mind—calm, decisive, and fearless—outweighs the glitter of names, and successfully grapples with error in its own entrenchments.

It is claimed by some that Congress has no right to legislate in any manner for the government of the territories. Others insist, that although Congress has the right to provide for the government of the territories, yet that we have no power to exclude *slavery* from them. If Congress has the right to legislate upon the subject of slavery in the territories, it is as much a breach of our fundamental law for us to withhold the exercise of that power in a proper case, as it would be for Congress to grasp authority forbidden by the Constitution. Whoever, through weakness, or from motives of ambition, withdraws that instrument from its appropriate field of action and cripples its native energies, inflicts a deep wound upon the Constitution, and has approached the verge of anarchy. The question then is, whether the doctrine of the absence of power in Congress to legislate upon this subject is sound? Will it stand the test of reason? Has it stood the test of experience?

No extended argument is necessary to show that Congress has ample power and the exclusive right to legislate for the Territories, and that this power does not stop short of, but embraces the subject of slavery. If the Constitution of the United States were entirely silent on the subject, the right to govern Territories acquired by purchase or conquest is manifestly incident to such acquisition. The right to acquire carries with it the power to take care of the thing acquired.

The United States, as a nation, can only act through Congress. By express provision in the Constitution, Congress has the exclusive power of making war. If a territory be conquered, what is to be done with the fruits of the conquest? Surely the right of sovereignty over the territory passes to the United States as a nation, and through the instrumentality of Congress the nation must govern it. If the territory derived from Mexico be regarded as a conquered country, we obtain-

ed the same right of sovereignty over it that Mexico had before the conquest. If the exercise of any portion of that sovereignty is forbidden to Congress by the Constitution, then to such extent, and no more, is the power of Congress circumscribed. But the Constitution has nowhere forbidden Congress control over the subject of slavery in the Territories. If, therefore, Mexico, when she governed the country, could control slavery therein, we can now. If she could exclude it from the country, so can we.

The rule is the same with regard to Territories acquired by purchase. In the year 1803 we purchased Louisiana of the Republic of France. The First Consul, in the name of the French people, ceded to the United States, "forever, and in *full sovereignty*, the said Territory, with all its rights and appurtenances." In 1819 we purchased the Floridas of Spain. This territory, also, according to the words of the treaty, was ceded to the United States "*in full property and sovereignty*." What is the sovereignty thus conveyed to the United States? It is the supreme power to rule and govern the Territories. The grants did not stop short and prohibit our interference with slavery, but they conveyed to us the most ample and unrestricted power.

By the late treaty with Mexico, we have acquired New Mexico and California; in part as a conquest, and in part as a purchase. Upon the execution of this treaty the *full right of sovereignty* over these Territories was vested in the United States. Manifestly, we have all the rights over the acquired country that Mexico ever could have had. Whether, therefore, our title was obtained by purchase or conquest, the effect is the same. In either case, the sovereignty passed from Mexico to the United States. The right to forbid slavery therein passed to us as fully as Mexico herself had enjoyed that power. If we have not the same power that Mexico had over the acquired territory, when, where, and how did we lose it? Amusing, indeed, would be the task of accounting for such a remarkable loss!

A distinction may be taken between territory within the original limits of the United States and our acquisitions since the formation of the Constitution. This distinction makes in favor of our power to legislate for the Territories. But suppose New Mexico and California to stand in the same relation that they would be if they had belonged to the United States as a part of our territory prior to the adoption of that instrument, and what is the result? It will not be difficult to find authority in the Constitution for the full and complete government of the Territories by the National Legislature.

Prior to the adoption of the Constitution, the vacant lands now composing the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, Kentucky, Tennessee, Alabama, and Mississippi; and which had been claimed by the United States on the one hand, and by various individual States on the other, had been chiefly ceded to the United States. As early as 1780, Congress, by a resolution, declared that these lands should subsequently be erected into States. By the ordinance of 1787, the government of the Territory northwest of the Ohio river was provided for, and a similar Territorial Government had been under discussion for the Territory south of that river as early as 1784. These facts were all before the framers of the Constitution when that instrument was made. Would it not be strange indeed if the venerable and sagacious founders of our present form of Government did not provide, in the Constitution, for the government of these vast Territories, preparatory to their admission into the Union as States? Can those who contend for the absence of this power assign any reason why a subject of such moment should have escaped the attention of that assemblage? The framers of that instrument well knew that the power to govern the Territories, under the Articles of Confederation, was doubted, and hence they must have distinctly seen the importance of embracing it in the Constitution. With these facts in view, the Convention inserted in the Constitution a clause conferring on Congress the "power to dispose

of, and make all needful *rules and regulations* respecting the territory and other property of the United States." The power to "make all needful *rules and regulations*," is a most comprehensive authority. Law itself is a rule. The Constitution and the whole body of laws, which this or any country has ever made, are nothing more than a system of *rules and regulations*. How, then, can it be said that the Constitution has not vested in Congress the most ample power to provide for the government of the Territories? The right of Congress to legislate for the Territories is far more ample than that of any State Government over its own dominions; for the States have surrendered a portion of their sovereignty to the Union; but Congress, over the Territories, has all the power of the State and General Governments combined.

If such be our power over the Territories, from what clause in the Constitution, or upon what principle of law, do gentlemen find that we are required to stop short of touching the question of slavery? By what rule of construction is it ascertained, that we may travel on in the labor of government until we reach the confines of this subject, and that then the whole machinery must halt? Surely if there be any reason for such a sudden rupture in the round of legislation, the sharp sense of gentlemen upon this subject, would have discovered it before this very power had been exercised more than half a century.

Notwithstanding this ample authority to legislate for the Territories, granted to Congress in the Constitution itself, scarcely a week passes without a stout denial of this power by those who are in favor of extending slavery beyond its present limits into territory now free. We are reminded of the importance of a strict construction of the Constitution—of the caution with which we should approach the outer margin of power therein granted. But gentlemen should be cautious about going too far. The rule which is proposed as our guide to let slavery into the Territories may let in freedom also. What authority in the Constitution is there for reclaiming a slave who escapes from a *State* into a *Territory*? Would it not be well to see whether the legislation of Congress has not gone beyond its constitutional sphere in upholding the institution of slavery? The only clause in the Constitution for reclaiming fugitive slaves provides that "no person held to service or labor in one *State*, under the laws thereof, escaping into another (another *State*) shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." If a slave escape from a *State* to a *Territory*, or from a *Territory* to a *State*, there is not a word in the *Constitution* authorizing the recapture of such slave; for the *Constitution* authorizes such recapture only when the slave escapes from one *State* to another *State*; not from a *State* to a *Territory*, from a *Territory* to a *State*, or from one *Territory* to another. What, then, shall be said of the statute of 1793, which goes beyond this clause in the Constitution, and authorizes the recapture of slaves escaping into or from any *Territory*? Where is the constitutional provision authorizing the passage of any such statute? But suppose the Constitution had conferred upon Congress the right to make all *needful rules and regulations* for the recapture of persons held to service escaping to or from the Territories, the words "rules and regulations" would then be allowed to mean something. They would be found full of significance. But let us put the question again, Where do you find the constitutional power to reclaim slaves who have escaped to or from the Territories? I answer, no where but in the clause empowering Congress "to make all needful rules and regulations respecting the territory or other property of the United States." To this same clause, alleged to confer no power upon Congress over the subject of slavery in the Territories, must you resort to reclaim your fugitive slaves, who escape into or from those Territories.

Another part of the Constitution throws further light on this question. By that in-

strument, *States* are forbidden from entering into any treaty, alliance, or confederation; *States* are prohibited from coining money, emitting bills of credit, making anything but gold and silver a tender, from making any *ex post facto* law, or granting any title of nobility. But no such power is forbidden to the *Territories*. Why? For the best of reasons: the government of these Territories, by the different States represented in Congress, is a sufficient guarantee against setting up in Territories what is forbidden to *States* themselves. But if it be true that Congress has no right to govern the Territories, and that the people of the Territories have a right to set up their own governments, then a *territorial Government*, thus self-constituted, has the right to go far beyond the powers conferred on the *States*, and coin money, emit bills of credit, make anything a tender, enact *ex post facto* laws, and grant *titles of nobility*! Is it believed that it was the intention of the framers of the Constitution to leave to the *Territories* the exercise of more ample powers than was allowed to the *States*?

The Constitution guarantees to the *States* a *republican* form of government, but contains nothing of this sort with regard to the *Territories*. Those who maintain that Congress has no right to legislate for the Territories would find no difficulty in setting up a monarchy in their limits without violating the Constitution.

If the people of the Territories have a right to originate their own governments, and are in no respect dependent upon the action of Congress, not only the form of government, but the time of organizing it, the extent of territory which they may choose to embrace, are without restriction or limitation. Will the advocates of this scheme contend that a few families can go into a territory of vast extent, and there, of their own motion, lawfully set up a government for themselves in defiance of the General Government? If not, what number of persons could do it? Where is there any guide in regard to the requisite number to be found? What amount of territory shall they bring within their jurisdiction? If Congress has nothing to do with governing the Territories, a few settlers might claim jurisdiction over territory enough for several *States*. Other settlements would grow up in different parts of the country, disclaiming any connection with those who happened first to get there, and endless conflicts for jurisdiction and power would be the inevitable consequence.

The first requisite of all Governments is not only the capacity to make suitable laws, but power to enforce the observance of them. Without this power, no contrivance, however wise and equitable its provisions, is worthy the name of Government. The compact should have consistence and strength. It should be able to stretch forth its power to the utmost limits of the Territory, and bring within the protection of its laws and institutions every inhabitant, however weak, and to suppress all disorder. Oregon, with her twelve thousand inhabitants, was unable to do this. During the unreasonable delay of Congress to provide for her a government, she from necessity constituted a legislature, and enacted laws; but many of the people refused to obey them. And while Oregon was petitioning *Congress to legalize what her Legislature had done*, this strange doctrine of a want of constitutional power in Congress to provide for her a government sprang into existence. It came from men stung with ambition, and whose only desire was to avoid the delicate responsibility of acting upon the subject. It came from men less anxious to provide for the government and well-being of the Territories than for themselves places of honor and profit.

The action of Congress in regard to the government of the Territories has been simple, and suited to the genius of all our institutions. When the inhabitants were scattered and few, a territorial government has been formed for most of the Territories, which have since become *States*, consisting of a governor and council, clothed with certain well-defined powers. As soon as the people of a Territory had grown sufficiently numerous to render such a step advisable, a delegate in Con-

gress was authorized, and a legislature elected by the people, was provided for ; but Congress reserved to itself the right to abrogate such laws. A still further increase of population, a growth in wealth and importance, at length brought these Territories, one after another, into the family of States. This system is admirably adapted to fit, step by step, even discordant materials for the business of self-government. In those Territories peopled by migration from other States, the process was plain and natural. Even Louisiana and Florida, though governed from their infancy by a monarchy, were gradually moulded into elements congenial to our republican institutions.

Some who admit the power of Congress to control slavery in the Territories, doubt or deny the expediency of exercising that power. They think that legislation upon this subject should be left to the people of the Territories. It is not strange that many well-disposed persons, naturally desirous to postpone the adjustment of difficult and exciting questions, should yield to this proposition quite an easy assent. Indeed, the scheme itself, at first view, is quite plausible, and, in some portions of the country, party alliance has had no small degree of influence in its favor. The ardent partisan is apt to think only of success in the first die to be turned, without considering fully the effect of his acts for any considerable time to come. He seizes the strong point in his case, and asks, with an air of triumph : Are you afraid to leave this question with the people ? Slavery is a domestic institution, as much so as the institution of marriage ; and will you withhold the right to control family arrangements from the people ? It is decided by great theologians, that slavery is sanctioned by Divine Revelation, and can you say that Congress ought to legislate upon the consciences of the people.

Slavery once introduced, takes a deep and abiding hold upon the country. Its effects are soon diffused through every department of society—all domestic arrangements must be formed in accordance with it. The plantations, instead of containing one or two hundred acres, must embrace one or two thousand—the plough and the axe, in the hands of the slave, must be used by him, or those scarcely above his condition ; for the man of substance never descends to the labor of the slave, where slavery has gained a foothold. Education cannot be generally diffused, for this can be done only by common schools ; and what can be done for common schools, where the extent of the plantations will not admit of residents within a mile or more of each other ? The sons and daughters of the planter will soon enter upon a life of luxurious ease. Industry is necessarily degraded—society is comparatively stationary—the poor cannot rise, and the rich fall only when prodigality has supplanted the place of virtue ; or the plantation, bereft of its fertility, compels the sons of the planter to seek a commission in the army or navy for subsistence. We know how hard it is to break from the thralldom of a monarchial government ; but far greater is the task of breaking up the institution of slavery when once fully established with all of its appendages, and when the wealth of the people consists in a great measure in the value of their slaves, than to throw off the yoke of the most powerful monarch. It may be said, that this was not so in the Northern States. But the Northern States were not surveyed into large plantations. Small farms, a dense population, and a cold climate will soon put an end to any slavery in any country. Sir, let the system of slavery be once settled fully into the texture of society, and when you undertake to reverse the wheels of legislation, and turn back the strong current of custom, of prejudice and interest, depend upon it you have a task in hand which generations may long strive in vain to achieve. The master will not easily give up the slave. He will not willingly put his own hands to the plough. It will not suit him to take up the toil now wrung from his bondmen. He has the wealth and the influence, and long will he maintain the ascendancy.

The climate of Oregon is as well suited to the products of slave labor as Virginia ; California and New Mexico take rank with the range of States in the ex-

treme South. If Oregon contained as many people to the square mile as the State of New York does, her population would exceed sixteen millions; or if as dense as that of Massachusetts, the number would be upwards of twenty-nine millions. But Oregon has now only twelve thousand inhabitants, and probably not over twenty-five hundred voters. The vast amount of her unoccupied lands belonging to the United States is worthy of attention, and the people of the whole nation are interested in their value. That country must be settled chiefly by migrations from the various States of the Union, and by emigrants from foreign countries. No one can doubt but that the people who will go there within a very few years, and who are now inhabitants of the States, will far exceed the present population of the Territory in numbers. The inhabitants of the whole Union, therefore, have a far greater interest in the question, whether slavery shall be admitted into Oregon than the present inhabitants of that country have. Any legislation of the people now there would not be as much for themselves as for others yet to go there, but who now reside in the various States, and who are and will be, until their removal, represented in the National Legislature. If, therefore, Congress had conferred upon the people of Oregon the power to admit or exclude slavery, the exercise of that power by so small a number of people scattered over such a vast extent of territory, thus settling the question not only for themselves but for all who should move there, would be both impolitic and unjust. It would be conferring upon the people of Oregon the power to legislate, not upon a course of policy which might be easily changed, and which is temporary in its character, but upon a vital question which must give bent and controlling influence to society there for ages. It is far more in accordance with the spirit of our republican institutions, that the people of the whole nation, through their representatives in Congress, should have some voice in arranging the permanent institutions of a new and distant Territory, than to vest this important trust in the hands of a few straggling settlers of uncongenial habits and fluctuating in purpose.

I have alluded to Oregon to illustrate a principle; and what has been said of that country is equally applicable to California and New Mexico. These two Territories, of twice the area of Oregon, with a population brought up under a foreign Government, speaking another language, and far from ranking high in the scale of civilization, do not present an inviting field for experiment.

Few will undertake to deny, at this late day, that this is a national question. Its influence has been felt in every part of the Union. The power which slavery has exerted is beyond all estimate. The politician has kneeled to this power as to an idol. The press has pleaded its cause. The *condition* of the slave has been lauded to the skies, and his *nature* traduced by the North and the South with the blackest invective. The belief that slavery should be excluded from the Territories now free, has been met with every grade of disparagement, both from the high in power and the low in purpose. The principle has been attacked under the name of men, and men under the name of principle, until our vernacular, unable to bear on the contest with sufficient effect, was forced to admit an accession of reproachful terms, unheard of before in any dialect. While this conflict of words has been carried on by the politician and the press, the great body of the people, North and South, have been comparatively quiet. They kept a clear eye upon passing events, and have given some indication that they also were entitled to be heard upon this question. Most of the newspaper artillery was, and still is, too far off, too high up, to disturb the quiet of their pursuits. They have not yet seen the Union break in pieces. They know as well as we do that discussion, if worth anything, will produce some stir—well enough called “agitation;” and they have lived long enough to know that *descriptions of tremendous excitements* are far more frequent than excitements themselves. Let us, then, turn to our duty, unawed by the machinery set in motion to avoid this question, as dangerous to the Union, and

firmly vote upon the subject as a national question. We ought to legislate for the benefit of these Territories, but at the same time keep in view the interest that every State has in their growth and prosperity. Their rapid settlement would sooner bring the public lands there into market, and enable us to turn over the avails to pay the expenses of the war, and the fifteen millions due to Mexico. Their speedy settlement will tend to increase our revenues derived from impost duties, to be devoted to the same object. If the question were settled that slavery should be excluded, farmers from the North and South, who work for themselves, would soon congregate there, irrigate the land, and show to the slaveholder that free labor is suited to a warm as well as a cold climate; that a man who is stimulated by the ordinary incentives of property, freedom, and independence, will accomplish more manual labor without the shackles of slavery upon him, than with them. Give us the opportunity to try the experiment of free labor in the same climate with your slave labor, but without the blighting influence of its presence, and then it would be far easier to decide which should have the preference. Slave labor now engrosses the business of raising cane and cotton. No one will contend that the labor of the freeman and slave can be carried on together. The freeman will not submit to the degradation of working by the side of the slave. Why banish the free laboring man of the North, and the free laboring man of the South from this field of our acquisitions? A large portion of the people residing in southern Ohio, Indiana, and Illinois, moved there from the slaveholding States, happy to get beyond the reach of this domestic institution. But the entire South have now no free, isothermal territory. There must be poor men in the South, who would be glad to live in a climate congenial to the place of their nativity; why not provide a free Territory where their laudable aspirations for an independent living upon their own farms may be gratified?

It is amusing to hear it announced that the South fought for the country, and if we exclude slavery, we banish the people of the South—the soldiers—from the acquired possessions. Let it be remembered that slaveholders do not carry knapsacks upon their backs. It is the poor of the South who have done that. The slaveholders are rewarded with the offices. These soldiers—men who have done the labor of the campaigns, who have suffered the greatest privations, obeyed every command, and met every danger—should be amply provided for. Think ye that these men, rocked in the cradle of virtuous poverty, fought for the extension and perpetuation of slavery? I greatly mistake the tendencies of man's nature, if the daring and brave but humane and sympathetic poor have any substantial alliance with the institution of slavery. No, sir, that institution depends upon elements drawn from another direction. If you intend to devote the new Territories to the officers of the Southern States who served in the Mexican war and their wealthy relatives and friends, and to banish the soldiers from thence, then plant slavery there. Let the fertile valleys there groan under its weight until the soil, abused and exhausted, shall refuse subsistence to man. Whether the North or the South furnished the largest number of men for the Mexican war, has no bearing upon this question. Certain it is that the North was anxious and offered to supply far more volunteers than the President would accept. If he admitted into the service a larger proportion from the South than the North, and refused to allow the North to furnish its due quota, it may be difficult to decide which is entitled to the most credit for patriotism, those who sought the favor of entering the service, but without success, or those who were so fortunate as to win that favor. If it be admitted that there is more patriotism in the South than the North, what then? Is Southern patriotism of such a sort that it must require a corresponding sacrifice of freedom? If this be so, the nature of patriotism is greatly changed since the Revolution. It has descended into the balance with merchandise, and is more nearly allied to crime than virtue.

The condition of the nation we have been at war with is such as to afford a lesson upon the subject of slavery. Brave as our armies were, it is obvious that they could not have expected such unprecedented success if they had been met by French or English troops; or if the Mexican race had equalled in valor the intrepid soldiers of Cortez. Three centuries of slavery in Mexico has produced important results. The soldiers drawn from a depressed people who have never enjoyed the substantial blessings of liberty, and the officers effeminate with luxury, afforded no insurmountable obstacle to our victorious armies. I do not underrate the valor of the American arms. They fought against numbers fearfully unequal, and gained a greater number of brilliant victories, without a single reverse, than was before recorded upon the page of history. But I do say, that if the Mexicans for half a century past had been as intelligent as the Americans, if the rewards of industry, enterprise, and individual and national independence had been allowed to wake into life and quicken the energies of her whole people, depend upon it, her capital could not have been reached by the American forces in a few months, and the existence of Mexico, as a nation, reduced within our power. Now it is proposed to carry slavery back into territories which we have acquired, as much by the blighting effects of slavery upon the people of Mexico, as by the valor of our armies. It seems to me that the nation should pause before doing this rash act. We should first look fully to the consequences, and measure the effect of spreading upon the whole northern and eastern borders of Mexico, for a distance of two thousand miles, an institution whose very nature and construction lays the country which it occupies, open to successful invasion from without, and servile insurrection within.

Slavery is an aggressive institution. Notwithstanding its incapacity for self-defence, it forever lusts for conquests and expansion. After the passage of the ordinance of 1787, slave owners, for years, continued to take their slaves from the Southern States, against the express provisions of that ordinance, into that part of the Northwest Territory now consisting of southern Ohio, Indiana, and Illinois. But settlers from the North and East also flocked into these States, and in progress of time, the provisions of the ordinance were enforced, and the traffic in slaves there ceased. The importation of slaves into Cuba has been forbidden near twenty years, by express treaty stipulations between the Spanish Government, Great Britain, and the United States, and for a violation of which the persons convicted were punishable as for piracy. The importation of slaves was prohibited in Brazil by like treaty stipulations with that Government; yet such is the aggressive character of the institution, that slaves are constantly imported from Africa into Brazil and Cuba, and sold in market under the very eye of their Governments. In 1829 slavery was abolished throughout the whole of Mexico, including, of course, Texas. Yet immigrants took advantage of the unsettled condition of things in Mexico, and in face of the prohibition, planted slavery in Texas. Let slavery be extended to our territories bordering upon Mexico, from the Gulf to the Pacific, and it will soon make its way, *against* law, as it has elsewhere, into the Mexican country, and thus lay the foundation of another war for conquest. This question, therefore, has an important bearing upon our future relations with Mexico. Place slavery upon that whole frontier, and another hundred millions of dollars will be called for in a few years, to carry on another war with that country—another war for a further acquisition of territory and the further extension of slavery.

Upon our part we have but one plain, simple, effective measure to carry out, and that is, to prohibit at once and forever the entrance of slavery into these Territories by an act of Congress. Opposed to this, measures of a thousand hues, often conflicting in principle, but tending to the same result, are put forth with inconceivable vehemence. We hear from one quarter that the question should be left to the people; from another, that slavery ought to be admitted south of north latitude thirty-six degrees thirty minutes, and excluded north of that line. One says

that the country should at once be organized into States ; another, that one State should be organized and the rest of the country put in "limbo"—neither Territory nor State, but bordering on both. All of these projects are children of the same family, having for their ultimate design the safe introduction of slavery into the free Territories. Circumstances indicate that the whole of the opponents of the far-famed "Wilmot proviso," or, in other words, all who are in favor of openly or secretly introducing slavery into these Territories, will at last combine to form these Territories into States at once, without any restriction upon the subject of slavery. I would not say that any such arrangement has been announced ; for it is sometimes supposed, in legislation as in diplomacy, that the last thing to be said is the first to be done. Some portion of the press has for a long time been laboring to prepare the public mind for this result.

It has been confidently alleged as a settled question, that when the Territories become States, they have a right to admit slavery or reject it as they should deem proper ; and hence that any restriction upon the Territories against admitting slavery is of no possible avail. This question deserves a passing notice. The framers of the Constitution of the United States clearly did not contemplate the acquisition of territory beyond the then existing limits of the Union, for no provision is made in that instrument for any such contingency. What, then, is the process by which the Constitution has been extended over our subsequent acquisitions ? How is it that this instrument, so complete in itself, so definite in all its parts, has broken over its original limits, and brought within its embrace an additional area sufficient for the maintenance of an empire ? Does its capacity enlarge with the growth of our passion for dominion ? Various laws of the United States in form prior to the acquisition of Louisiana, Florida, Oregon, and Texas, have been extended over those countries by express enactment of Congress ; and the Senate, in the celebrated "compromise bill" of last winter, inserted a clause *extending the Constitution* over California and New Mexico. It is not my purpose to inquire into the abstract right of Congress to make such enactments. I leave to others to discuss the question when it may arise, whether the *Constitution* is made of such elastic materials as to be capable of extension or contraction by *an act of Congress*. But I do maintain that whether these acquired Territories be held within the embrace of the Constitution by the tacit acquiescence of our people, or by the enactments of our National Legislature, that Legislature has the right to prescribe the terms upon which such Territories may come into the Union as States, and to withhold from such States the power to legislate upon the subject of slavery. Let us illustrate this principle by a few familiar examples. The ordinance of 1787 prohibiting slavery in the Territories northwest of the Ohio river, was adopted by Congress under the Articles of Confederation, before the adoption of the Constitution of the United States in 1789. After the adoption of the Constitution, Congress recognized the ordinance of 1787, as a subsisting law, and applied it to the state of things under the Constitution.

In 1802, Congress authorized the then Territory of Ohio to form a constitution and State government, but required *the same to be republican, and not repugnant to the ordinance of 1787*. Congress also reserved the right to change the boundary of that State. Indiana and Illinois were severally admitted subject to the same ordinance. In 1820, Congress, by the act providing for the admission of the State of Missouri into the Union, prohibited slavery in all the rest of the territory purchased of France which lies north of the parallel of thirty-six degrees and thirty minutes of north latitude. In the joint resolutions of Congress, passed in 1845, providing for the annexation of Texas, it is declared that such States as might thereafter be formed out of that portion of Texas lying south of north latitude thirty-six degrees and thirty minutes, should be admitted into the Union with or without slavery, as the people of each State asking admission might desire ; and that in

such State or States as should be formed out of said territory north of said parallel of latitude, slavery or involuntary servitude, except for crime, should be prohibited. These provisions, with respect to the ordinance of 1787, in regard to the possessions purchased of France and acquired by the annexation of Texas, are in the nature of compacts, and cannot be abrogated except by the joint action of Congress and the government of a State interested in such abrogation. If, previous to the admission of California and New Mexico into the Union as States, Congress shall have prohibited slavery therein, such prohibition must continue until it is repealed. And if, during the continuance of such prohibition, they shall be admitted into the Union as States, such admission would of course be subject to the prohibition of slavery; after which, the action of both the State and National Legislatures would be required to abrogate the restriction.

If an application be made for the admission of California and New Mexico into the Union as States, at once, and without having passed through previous discipline under territorial governments, it well becomes us to inquire into the reasons for such extraordinary proceedings.

Surely it cannot be maintained that this foreign and unsettled population, not yet a year out of the control of Mexico, are better qualified to exercise the rights of State sovereignty than the people of Ohio, Indiana, and the other new Territories were, and who were required to pass through the preparatory steps of territorial governments. No, sir, this is not the reason for hurrying California and New Mexico into the Union as States. But the advocates of this plan suppose, that by making these Territories States at once, no provision excluding slavery will be required. In this I think they are mistaken. The Constitution confers upon Congress the power to admit new States into the Union. New States cannot come into the Union as a matter of arbitrary and absolute right. They are to be partners in the Confederacy, and it is the duty of the National Legislature to judge of the expediency of the measure, and to admit them upon such conditions as shall promote the general welfare of the Union. If to exclude slavery would promote this object, let that be a condition. This condition would be in the nature of a compact, and as binding upon the parties as are the restrictions contained in the ordinance of 1787, the Missouri compromise, or the resolutions for annexing Texas, are upon the parties concerned. It is unjust to call this prohibition an invidious discrimination, when the free States northwest of the Ohio, Iowa, and a part of Texas, are yet under the same prohibition. In Territories like California and New Mexico, where the white population is comparatively small, the anxiety to gain settlers is so great that but little objection is made to slavery; and slaveholders, with their slaves, may be considered a valuable acquisition. Hence Indiana, when under a territorial government, and before she had learned to deprecate the effects of slavery upon her prosperity, petitioned Congress for the repeal of the restrictions contained in the ordinance of 1787, prohibiting slavery from that Territory. She has reason to rejoice that Congress declined to grant the petition; for if granted, she would now have been languishing under a load destructive to her prosperity as a State. Emigrants from the free States would have shunned her as a blot upon the fair Northwest. It is obvious, therefore, that the right to legislate upon this subject should be held by Congress for the present, at least, whether the governments to be constituted shall be State or territorial.

With a view of showing that no legislation upon the subject of slavery in the new Territories would be of any avail, the position is taken, that inasmuch as slavery was abolished while these Territories formed a part of the Mexican Confederacy, they are now free and need no prohibition by act of Congress. I concur in the opinion, that these Territories are indeed free. But the whole people of the slaveholding States, so far as I have been able to learn, are of a different

opinion ; and maintain, that if a citizen of the United States should take his slaves into these Territories, he would have a right to hold them as his property. This difference of opinion arises from the difference in the institutions under which the North and the South have been respectively educated. In the North, no person, whatever the color, is to be deemed a slave until that fact be proved. In the South, a negro is deemed a slave until he is proved to be free ; and if no master claims him, they have a summary process of providing a master for him. In one of the Southern States, it has recently been decided by the courts, that the fact that a negro is found in any place is evidence that the law authorizes slavery in such place ; and the color of the skin is left to settle the question which is the master and which the slave. That there should be such a fundamental difference between the laws of the North and the South upon this subject of *evidence*, is remarkable, but not less strange than the difference of opinion existing in regard to the question of freedom in the new Territories.

It has been the practice in every civilized nation, when there is a difference of opinion in regard to an important legal principle, to have the principle settled by legislation. A great variety of statutes are passed merely in affirmation of the common law. So of this question. It is not only our right but our duty to settle it definitely and permanently by an act of the National Legislature. But if gentlemen choose to leave it open and unsettled, what will be the consequence ? A struggle will be kept up year after year. The master will take his slaves into the new territories, and who will be there to sue for their freedom ? Surely the master will not send off his slaves to employ counsel for that purpose, nor will he furnish them funds to carry on the litigation. Suppose that some benevolent person should cause a suit to be instituted for the liberation of a slave ; if the judge be a Southern man, as he doubtless will be, he will decide that the color of the person held to service is evidence, not only that slavery is sanctioned by law there, but that the person himself is a slave. As the law stands the suit could not be taken to the Supreme Court of the United States for reversal, and thus the suit would terminate without liberating the slave. But suppose there were a law authorizing the removal of such a cause to the Supreme Court of the United States, and the suit were prosecuted, at a vast expense, to a successful termination ; verily, one slave would be liberated ; but what would become of the thousands by that time carried into the new territory ? Would suits for the freedom of each one be instituted ? Let the fate of those slaves of Pennsylvania, entitled to freedom by the manumission act of that State, who were sent and sold in Kentucky, and their posterity answer the question. Let the thousands of negroes unlawfully introduced yearly into Brazil and Cuba, and there fixed in perpetual bondage, proclaim how frail to the black race the tenure of liberty is. If, under such circumstances, our National Legislature is too weak to settle the law by direct and unequivocal enactment, equally vacillating will be the adjudications of our courts of justice upon this subject. Slavery, as aggressive now as ever, will stealthily invade our new territorial acquisitions, and plant itself there ; and legislators now having the power, but not the magnanimity to *prevent it*, will not then have the firmness to *expel it*. If Congress should expressly forbid the introduction of slavery into the new territories, the act itself would be a pledge of the nation to the prompt execution of the law. If the law were violated, a remedy adequate to the task would soon be provided. Such a law would be known and heeded by the settlers destined for that country. But let this remain a disputed question ; let Congress falter and hesitate, but not decide, and slavery will have won a victory over liberty, unbecoming the age in which we live. The certificates of chancellors and judges of the North—given out of court—printed but not reported, will be as useless in staying the tide of this aggressive institution, as they have been fruitless in the political arena.

I am aware that this subject is not agreeable to many for whom I have a high respect. I can make allowance for difference in education, and doubt not the frequent exercise of humanity in the master. I am not called upon to speak of slavery in the States where it now exists; when those States came into the Union, no power over the subject was reserved to the General Government, and hence this power belongs to such States exclusively. But in discussing the expediency and the right of extending this institution into free territory, it would be unpardonable in a legislator to shut his eyes against any thing legitimately bearing on the question.

The charge, that the agitation of this subject tends to affect slave property in the Southern States is true to a certain extent. It is like the influence produced by the emancipation of our own country from the thralldom of Great Britain upon several nations in Europe. So will the policy pursued by our Government in regard to these newly acquired Territories, produce some moral effect upon the slaveholding States themselves. Even the emancipation of the slaves in the Northern States must have produced some influence in the South. I am not surprised that the emancipation of slaves by Mexico, the South American Republics, England, and Denmark, should press somewhat upon the Southern States, and produce a restiveness occasioned by the spread of principles hostile to this institution. This progress of freedom to the slave ill prepared the mind of the slaveholder for the intelligence that republican France, among her first legislative enactments, extended to her slaves the same liberty which she had won for her own citizens; and ratified the deed by inserting in her Constitution the short but comprehensive and memorable article, that "slavery cannot exist in any territory belonging to France." Though this general progress of liberty may produce some effect in the South, it is demanding too much that all that the world is doing for liberal principles should stop on that account. Can the South ask more than the pledge, that slavery in the States where it now is, shall not be interfered with.

I am aware that there is a species of philanthropists North and South who verily believe that the black race is better off in a state of servitude than freedom. They also fear that the discussion in regard to slavery in the Territories will induce the master to draw the cord of servitude closer, and thus prove an injury to the slave himself. Their fears, however, do not stop here. They think that the discussion of this subject will disturb the respective political parties to which they belong, and that, if persevered in, the loss of place and patronage may be the consequence. These sentiments are felt the strongest in the dominant political party, whichever that party may chance to be; and as power changes from one party to the other, sentiments upon this subject change also. Who, a year since, would have thought that the gentleman from Indiana (Mr. THOMPSON) would so soon have hurled denunciation at his political friend from New York, (Mr. GOTTF,) for an effort to abolish the slave trade at the capital of the nation. Ah, sir! the changes going on upon the other side of the House are as rapid as the mutations in the formation of insects: yesterday, the hard, tough chrysalis; to-day, the full grown butterfly! Mr. GOTTF's resolution was carried by a large majority. By changes on the other side of the political line, it was reconsidered and sent upon the general orders, where it will never be reached more. Time will disclose from what motives these changes sprang. Let me say to the gentleman from Indiana, that the principle of the "Wilmot proviso," which so disturbs thy slumbers and haunts thee as a spectre, has only paid thee his first boding visit, and "will meet thee again at Cannæ." Those who maintain that the negro is best off in a state of slavery, belong to that class of philosophers who believe the less a man knows the more happy he is—the lower the degradation the greater the enjoyment. This rule, if applicable anywhere, can have but little respect to color. It may well be supposed, that when the slaveholder from time to time discovers the progress of liberal principles, the

greater will be his apprehension of the frailty of the tenure under which he holds his bondmen ; and hence it is to be expected that less lenity to his slaves will be exhibited. That this question, also, may disurb political parties, is equally obvious. But the apprehension of these results, necessarily of a temporary character, forms no basis for arresting a course of legislation founded upon the most obvious principles of justice. If fear, instead of sound sense, is to guide us ; if an act clearly wrong is to be done, merely out of fear that a right one may produce some temporary inconvenience to persons or political parties, then the weak legislator, who is easily driven from instability to timidity, from timidity to fear, from fear to delerious affright, should be sent here to transact the business of the nation. I feel disgust for arguments so wanting in substance. They indicate a species of mental vassalage unbecoming the representatives of a free and independent people.

Sir, the proposition to extend slavery beyond its present limits, brings the institution itself before us upon its merits, moral, social, and political. If slavery is to be sent into the new Territories, it should first be shown, by those who take an interest in its favor, to be advantageous to the country and its institutions, to the slave and to the master. That the surrender of a new country of vast extent, to this domestic institution, tends to strengthen and perpetuate it, will not be denied by any who have examined its progress, decline, and final extinction, in every part of western Europe. The vast amount of uncultivated lands in the Southern States will keep up the institution for a long time to come. The addition of Texas to this interest will perpetuate slavery more than half a century. The master will not give up the institution. The longer it continues, the less is he inclined to abandon it. So long as slaveholders, by their numbers, their wealth, and their influence, can control a majority of electors in a State, so long will the institution remain there. It has always been so, and it always will be. When did any class of men voluntarily surrender power ? The French church and nobility would not only have held, but increased their vast possessions to this day, but for the revolution of 1799. Did the cry of want ever awaken their sympathy ? The British landholders have never extended their possessions so rapidly as now. The tenants are daily driven from their houses, to wander without shelter, and to famish. When will these hereditary landholders consent to divide their vast possessions, or pass any law tending to an equal distribution even among their own children ? When the slaveholders as a body, shall voluntarily manumit their slaves, or enact laws encouraging manumission, then may we expect that the British nobleman will unloose his iron grasp upon his boundless possessions. Both are actuated by the same motives ; the effect produced by both is the same. Neither has so praised his own peculiar institution for a century past as now, and neither institution has been more universally deplored than at this moment.

I refer to slavery as it is, for the purpose of showing what its fruits must be in our new Territories. What is its effect upon the white race ? Under every form of government having the benefits of civilization there is a middle class, neither rich nor poor, in which is concentrated the chief enterprise of the country. The virtues of industry and economy, ambition, and capacity to increase in knowledge and wealth, a watchful guardianship of their own rights, and a vigilant attention to the public welfare, are their leading characteristics. In the slave States there is in substance no middle class. Great wealth or hopeless poverty is the settled condition. The connecting link is left out. The white laborer is necessarily the companion of the slave ; and the master is as far removed from the one as the other. This arrangement of society is an artificial one. It is unsound in principle, and unsafe in practice. It consists of a conglomeration of many oligarchies : the more numerous the masters, the more arbitrary the rule. The one is raised as far above a fit condition for improvement as the other is sunk below it. It is anti-republican in all its tendencies. What is the true strength of such a compact ?

Probe it to the core and see if it is sound there. Does each part naturally tend to support and strengthen the other? No; there is no affinity between the lash and its victim. A slight change of circumstances might produce a change of masters. If slavery is not safe against internal commotion, what is its effect in time of war? Slave possessions present an open gateway to the invader. This is the institution, sir, which gentlemen propose to send off, as a guard, upon our remote outposts, and stretch it along our southern border to the Pacific Ocean. The Constitution guarantees to each State a republican form of government; and the only way to insure that result is, to set up institutions in our Territories which shall prove the elements of power, not the seed of weakness and decay.

The effects of this institution are not the choice of the slaveholder. He chooses to possess himself of the slaves, and the effects are as far beyond his control as the laws of nature are. Send this institution to California and New Mexico, and you must send with it all its incidents. You must take, as an exemplar, the statutes of the slave States, statutes enacted not from choice, but as a necessary part of the institution, and learn the severe lesson of what *must* be done. Compare these laws with the past, and you will not find, in the history of the most barbarous age, enactments more revolting to the moral sense of mankind. Yes, sir; if you *will* send slavery into our free Territories, you *must* send the "black code" there to protect it. You must teach the people of the Territories to regard these human beings as *property*—*property* of a peculiar character. You must insert in the code that this *property* must not read; that it may become *Christian property*, and be baptized, but it shall not, for that cause, become free; that this *property* must not steal *itself*, and if it should, it shall be adjudged guilty of felony; that this *property* shall not commit murder on pain of death; and if executed, the *State* shall pay the owner for it; that this *property* shall not take an oath against a white man, notwithstanding the brutality of the offence committed. You must send the whipping-post there, and tutor the sensibilities of the people with the spectacle of flogging. Patrols must be sent out at the public expense to hunt down the truant slave, and guard the dwelling of his master. The army and navy must be increased to quell internal commotion. The penalty of death must be inflicted on the slaves for petty offences, and *justices of the peace* authorized to flog, maim, or hang them. The slave must have no right to a trial by jury. The solemn dignitaries of the law—men supposed to be capable of exercising the grave civil responsibilities conferred on them by the "ten pound act," must be the sole dispensers, without appeal, of life and liberty. Every possible discouragement must be enacted against the voluntary emancipation of the slave by the master; and laws either expelling the free-blacks from the country, or placing them in a state of servility a little above slavery itself, must mar the face of your statute books. The slave market must be enlarged, the breeding of slaves for sale encouraged, and the strongest ties which nature has made, wrung asunder, to people these new Territories with the victims of the slave-dealer's avarice.

Whoever learns to look upon a wrong with unconcern, has done himself a greater injury than the one inflicted on the sufferer. Is he not to be pitied who has so subdued his own moral sense, as to witness with cool deliberation and frigid composure, the final separation of parent and child to meet a destiny, to them all the more afflicting, because unknown? The horror of the middle passage has been deplored by the philanthropist, and condemned by the civilized world—its fatality of life has excited sympathy everywhere. But no bodily suffering can stir anguish so deep as the mental torture of separation to those whose only solace is the affectionate regard of parents (slaves though they be) and other ties of consanguinity. Tutor a man to look with disdain upon these emotions, and he is a fit instrument to carry on the slave trade. Such a man is more the object of pity than the subject of censure. He has lost more than his own liberty—he has lost his humanity.

The question then, is, whether we shall open a new market for the encouragement of this traffic? Will such a market improve our people, and contribute to the general welfare of the country? Do a majority of the people in the United States desire the adoption of such a measure? If not, then our duty is plain; and we will write upon the statute book the perpetual exclusion of slavery from the free territories.